

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

James Marshall,

Petitioner,

v.

Case No. 1:09cv429

Warden, Warren Correctional Institution,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on August 11, 2010 (Doc. 20).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. 636, this Court finds the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED** in its entirety consistent with the opinion of the Magistrate Judge. The petition (Doc. 2) is **STAYED** and **TERMINATED** on the Court's docket pending petitioner's exhaustion of his Ohio remedies. When the petitioner has demonstrated his compliance by fully exhausting his Ohio remedies, he will be granted leave to reinstate this matter on the Court's active docket.

A certificate of appealability will not be issued under the standard set for in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to

proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in “good faith,” and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

S/Michael R. Barrett
Michael R. Barrett
United States District Judge